

C.W.S., Inc. and General Warehousemen, Local 598, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL-CIO, Petitioner. Case 21-RC-18599

September 28, 1990

DECISION AND DIRECTION OF ELECTION

BY MEMBERS CRACRAFT, DEVANEY, AND OVIATT

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Hearing Officer Glenn R. Caddick. Following the hearing, and pursuant to Section 102.67 of the National Labor Relations Board's Rules and Regulations, the case was transferred to the National Labor Relations Board for decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the hearing officer's rulings made at the hearing and finds that they are free from prejudicial error. They are affirmed.

On the entire record in this case, the Board finds

1. C.W.S., Inc. is a Delaware corporation engaged in the business of loading and unloading railroad freight for various customers, including Southern Pacific Transportation Company in Los Angeles, California, the Employer's only location involved here. During the 12 months preceding the hearing, a representative period, the Employer purchased and received goods valued in excess of \$50,000 directly from suppliers located outside the State of California.

The Employer contends that the petition should be dismissed because it is not an "employer" within the meaning of Section 2(2) of the National Labor Relations Act. The Employer asserts that it is subject to the Railway Labor Act because it exists solely to furnish loading and unloading services to railroad carriers and the employees in the petitioned-for unit are subject to substantial control by Southern Pacific Transportation Company.¹

¹Sec. 1, first, of the Railway Labor Act extends coverage of the Act to "any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equip-

The Petitioner, on the other hand, contends that the Employer does not come under the Railway Labor Act because the Southern Pacific Transportation Company does not own or control the Employer's operation. It further asserts that this matter falls within the jurisdiction of the National Labor Relations Act.

Section 2(2) of the Act provides in pertinent part that the term "employer" as used in the National Labor Relations Act shall not include any person subject to the Railway Labor Act. Accordingly, we requested the National Mediation Board to determine the applicability of the Railway Labor Act to the Employer. In reply, the National Mediation Board advised

[T]he Board finds that CWS is not directly or indirectly owned or controlled by or under common control with, any carrier subject to the Railway Labor Act. . . . For this reason, we do not find jurisdiction over CWS.²

On the basis of the facts set forth above, we find that the Employer is engaged in commerce within the meaning of the National Labor Relations Act and that it will effectuate the policies of the Act to assert jurisdiction.

2. The parties stipulated, and we find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

3. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and 2(6) and (7) of the Act.

4. The parties stipulated, and we find, that the following employees of the Employer constitute an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All crane operators, forklift operators, welders, loaders, and mechanics employed by the Employer in Los Angeles, California; excluding all other employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

[Direction of Election omitted from publication.]

ment or facilities . . . in connection with the . . . handling of property transported by railroad."

²C.W.S., Inc., 17 NMB No. 92 (1990).